

## Faulk, Camilla

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**From:** Charles Williams [attywilliams@comcast.net]  
**Sent:** Friday, April 29, 2011 4:42 PM  
**To:** Faulk, Camilla  
**Subject:** Proposed criminal court rule 4.11--recording interviews  
  
**Importance:** High

The comments made for and against the adoption of proposed Criminal Rule 4.11 make for interesting reading. They appear to pit victims against criminal defense lawyers. Victim groups and their representatives want to frame the issue as one of further victimization perpetrated by criminals and their defense counsel.

Defense counsel, for the most part, frame the issue in terms of a primary goal of the criminal-justice system—namely, that of increasing the accuracy and reliability of trial outcomes. But there is another way to see this dispute.

In my mind, the real issue is the potential victimization of the person who is falsely or mistakenly accused. As a criminal defense lawyer of nearly 30 years standing, I can't begin to recount the many difficulties that I have encountered in interviewing hostile witnesses and preserving that information for use at trial. I would ask you to put yourself in the shoes of the falsely-accused defendant. In all honesty, if you yourself were falsely accused of a crime, wouldn't you want this rule to be in place?

Most people expect the criminal-justice system to do justice—to give everyone concerned what they deserve. That is the source of the system's legitimacy. People deserve not to be victimized. But isn't the falsely accused person yet another kind of victim? The accused whose lawyer can't impeach a false witness effectively because no recording of the defense interview was allowed becomes a victim of the system itself.

No defendant should bear the risk of a false conviction in order to save a witness from the indignity of being tape recorded. We should not trade one kind of victimization for another.